



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

JAN 28 2015

Regulatory Division

Certified Mail

SUBJECT: File Number 2007-400075S

Mr. Tim Steele
Sobrato Development Companies
10600 North De Anza Boulevard, Suite 200
Cupertino, California 95104

Dear Mr. Steele:

This correspondence is in regard to the September 10, 2014, correspondence from your attorney, Mr. David Moser, informing us of recent illegal dumping on your property referred to as "Area 4" in Newark. Area 4 is located south of Cherry Street, east of Mowry Avenue, and west of Stevens Boulevard adjacent to Mowry Slough in the City of Newark, Alameda County, California.

An inspection conducted by personnel from this office on November 4, 2014, verified the unauthorized discharge of fill material in 11.85 acres of jurisdictional wetlands and 1.33 acres of jurisdictional other waters of the U.S. resulting in a violation of Section 404 of the Clean Water Act (33 U.S.C. § 1344). The unauthorized discharge of fill occurred within two parcels (APN's 537-850-11-4 and 537-850-5) and is shown in the enclosed map (Enclosure 1).

All discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States (U.S.), or below the high tide line in tidal waters of the U.S., and within the lateral extent of wetlands adjacent to these waters typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act. Waters of the U.S. generally include all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters, the use degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the U.S.; tributaries of the waters identified above; the territorial seas; and wetlands adjacent to all the waters identified above

Our regulations (33 C.F.R. §326.3) state that when the District Engineer becomes aware of any unauthorized work or activity, he should commence an immediate investigation to determine the appropriate administrative and/or legal action to be taken. Legal action could include either

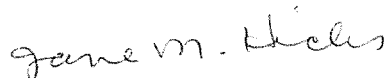
civil or criminal proceedings and might result in a court directing the removal of existing material or structures.

Section 309 of the Clean Water Act (33 U.S.C. § 1319) provides penalties for violation of Section 301 (33 U.S.C. § 1311) of the Clean Water Act. Pursuant to Section 301, it is illegal to discharge any dredged or fill material without a permit issued by the Corps of Engineers pursuant to Section 404 (33 U.S.C. § 1344) of the Clean Water Act. A person may be subject to civil penalties of as much as \$37,500 per day for each violation. Furthermore, the law also allows criminal penalties for violations. For the most egregious of those violations, the law provides for imprisonment for as much as 15 years, or fines of up to \$1,000,000 for a violation (or even higher in some circumstances) (33 U.S.C. § 1319; 18 U.S.C. § 3571).

In accordance with our regulations at 33 CFR Section 326.3(d)(1), you are hereby ordered to implement the following initial corrective measure: remove all unauthorized fill that has been placed in jurisdictional wetland and other waters and return those areas to the original pre-fill grade/elevation. The removed unauthorized fill should be disposed of at an approved upland location. You shall notify us of the proposed upland disposal site and not proceed to remove the fill until you receive Corps approval in writing. The work should be completed within the summer months of this year (June - September 30, 2015). Compliance with this order will not foreclose the Government's options to initiate appropriate legal action or to later require the submission of a permit application. Finally, it is further requested that you allow Corps of Engineers personnel free access to the property referenced above to complete our investigation.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Division at 415-503-6778. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter.

Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosure

Copies Furnished With Enclosure:

US Attorney, San Francisco, CA
US EPA, San Francisco, CA (Attn. David Wampler)
CA RWQCB, Oakland, CA
H.T. Harvey & Associates (Attn. Pat Boursier)